



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Amendments to Military Rule of Evidence 803(10)

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Publication of Amendment to Military Rule of Evidence 803(10), Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: On December 1, 2013, Federal Rule of Evidence 803(10) was amended to add a notification requirement prior to the offering of a certification proving the absence of a public record. In accordance with Military Rule of Evidence 1102(a), unless action to the contrary is taken by the President, amendments to the Federal Rules of Evidence amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments. Therefore, on June 1, 2015, since no action to the contrary was taken by the President, Military Rule of Evidence 803(10) was amended by operation of law.

DATES: The amendment to Military Rule of Evidence 803(10) is effective as of June 1, 2015.

FOR FURTHER INFORMATION CONTACT: Capt Harlye S. Carlton, USMC, (703) 963-9299 or harlye.carlton@usmc.mil. The JSC website is located at: <http://jsc.defense.gov>.

SUPPLEMENTARY INFORMATION:

Annex

Military Rule of Evidence 803(10) was amended as follows:

Military Rule of Evidence 803(10)

(10) *Absence of a Public Record*. Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if:

(A) the testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

Dated: July 13, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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